

~~ADMINISTRATIVE - INTERNAL USE ONLY~~*file
Procurement*

25 January 1988

MEMORANDUM FOR:

STAT

Chief, Procurement Management Staff

FROM:

STAT

Procurement Management Staff

SUBJECT:

S. 909, Commercial Activities Contracting Act of 1987 -
Review and Comment

1. If enacted into law, the Commercial Activities Contracting Act of 1987 (S. 909) would require that executive agencies return to the U.S. Treasury all amounts saved as a result of contracting out of "commercial activities," as now required by regulation under OMB Circular A-76. Along with the return of funds, that agency would also be required to reduce the number of government personnel it once took to perform that activity.

2. While the Agency has taken the position that it is not subject to OMB Circular A-76, it is arguable that the Agency is subject to the bill and thus may become subject to A-76. Section 4 of S. 909 defines executive agency to include "independent establishment," as defined in 5 USC 104. The Agency is considered an independent establishment under 5 USC 104. In the event that S. 909 becomes law, we would most likely rely on Sections 6 and 8 of the CIA Act of 1949 and claim that Congress never intended to make the Agency subject to the bill.

3. Procurement Management Staff, OL, believes that the Agency should oppose S.909 for both general governmental reasons and Agency specific reasons. From the general standpoint, our objection is based on the increased burden of annual studies and reporting. In addition, agencies will experience a permanent reduction in budget and personnel. Presently, such savings are used to provide training and job placement services, as well as increased productivity studies by the agency that incurs the saving. Returning all of these funds to the Treasury would leave displaced workers without these services.

3. From the Agency's specific standpoint, a statutory requirement to return A-76 savings to the Treasury might subject the Agency to court challenge that certain Agency functions could be performed by the private sector. Moreover, once such functions were performed by the private sector, there would be a permanent loss of the Agency personnel that once performed that function. Agency personnel ceilings and end strengths would also be permanently affected.

SUBJECT: S. 909, Commercial Activities Contracting Act of 1987 -
Review and Comment

4. Another problem comes from the ever expanding definition of "commercial activities." The experience of the Department of Defense bears repeating. Ever since OMB Circular A-76 was promulgated in 1966, the Department of Defense has been subject to it. During this time the definition of "commercial activities" has expanded to include many functions that could be considered governmental in nature. As applied to the Defense Department, commercial activities, with certain exceptions, that must be contracted out and not performed in-house include: 1) all health services, 2) financial and payroll services, 3) record keeping, 4) repair maintenance, modernization or overhaul of any equipment, including communications, aircraft, electronic and automobile, 5) research and development and 6) education and training. See 32 CFR 169 and 169a for a complete list.

STAT

6. Deficit reduction is the underlying purpose of S.909. Accordingly, the bill has facial appeal and may gather momentum on that basis alone. Asking for an Agency exemption from a committee staff that has little or no appreciation of the intelligence process may not be worth the effort. It may be more prudent to seek the assistance of our oversight committees or to get behind DOD in opposing the bill.

STAT

29 January 1988

MEMORANDUM FOR: Liaison Officer
Office of Congressional Affairs, DCI

FROM:
Chief, Procurement Management Staff, OL

STAT

SUBJECT: S. 909, Commercial Activities Contracting Act of 1987

1. With respect to S. 909 entitled "Commercial Activities Contracting Act of 1987," we provide the following two attachments:

(a) A "Routing and Record Sheet" (Form 610), dated 11 January 1988, from Associate General Counsel, reflecting his views on S. 909. Procurement Management Staff (PMS), OL concurs with these views. (Attachment A)

STAT

(b) An OL/PMS memorandum, dated 25 January 1988, which provides further analysis on the subject Act, S. 909. (Attachment B)

2. Per our understanding, all inquiries on procurement legislation are to be sent directly to the undersigned for action.

STAT

Attachments:

- A. Routing and Record Sheet
- B. Memorandum

OL 5013-88



ADMINISTRATIVE - INTERNAL USE ONLY

ADMINISTRATIVE - INTERNAL USE ONLY

SUBJECT: S. 909, Commercial Activities Contracting Act of 1987

Distribution:

Original - Addressee

1 - PE/OL

1 - OL/PMS Official

1 - OL/PMS Chrono

STAT

OL/PMS

(27JAN88)

STAT

ADMINISTRATIVE - INTERNAL USE ONLY

ROUTING AND RECORD SHEET**SUBJECT:** (Optional)

Commercial Activities Contracting Act of 1987, S. 909

FROM:

Associate General Counsel

EXTENSION**NO.**

STAT

DATE

11 JAN 1988

STAT

TO: (Officer designation, room number, and building)**DATE****OFFICER'S INITIALS****COMMENTS** (Number each comment to show from whom to whom. Draw a line across column after each comment.)

RECEIVED

FORWARDED

1. C/PMS/OL

11 JAN 1988

We have reviewed the attached bill and find it objectionable because of the increased burden it places on government agencies, particularly since it requires annual studies and the transfer of Agency money back to the Treasury. This objection, however, would be common to all federal agencies and not just the CIA. If you believe the Office of Logistics would have other objections to this bill, you may want to comment separately to OCA.

2.

3.

4.

5.

6.

7.

8.

9.

10.

11.

12.

STAT

Attachment
As Stated